IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RURAL CELLULAR ASSOCIATION and T-MOBILE, U.S.A.,	)	
Petitioners,	)	
v.	)	**No. 08-1069 (& consolidated cases)**
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,	)	
Respondents.	)	

OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION TO EMERGENCY MOTIONS FOR STAY PENDING JUDICIAL REVIEW

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March 10, 2008

The Federal Communications Commission respectfully files this response in opposition to the emergency motions for stay pending judicial review filed on February 29, 2008, by petitioner AT&T Inc. ("AT&T") and on March 3, 2008, by petitioners Rural Cellular Association, T-Mobile, U.S.A., Verizon Wireless, and Sprint Nextel Corporation (collectively, "Joint Movants"). Petitioners ask the Court to stay the effectiveness of a Commission rulemaking order that requires wireless communications carriers to meet – in increments over a five-year period – improved location accuracy standards for Enhanced 911 ("E911") calls. *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 20105 (2007), 73 Fed. Reg. 8617 (February 14, 2008) ("*Order*"). The Commission adopted those E911 requirements "[i]n the interests of public safety and homeland security," because those requirements are critical to ensuring that 911 call centers "receive accurate, meaningful location information" needed "to dispatch local emergency responders to the correct location." *Order* ¶¶ 8, 15.

Petitioners fail to show that a stay is warranted. As shown below, the Commission followed proper procedure in adopting the *Order*, and its requirements were amply justified by profound public safety considerations and the Commission's expert assessment of available and developing technology. Additionally, petitioners have not established the *imminent* irreparable harm that is a fundamental prerequisite for the injunctive relief they seek, and the public interest in an effective 911 system would be seriously harmed by grant of a stay.

BACKGROUND

One of the FCC's primary missions under the Communications Act is "promoting safety of life and property through the use of wire and radio communications," 47 U.S.C. § 151, and Congress specifically has directed the Commission to effectuate that goal through the 911 system. In the Wireless Communications and Public Safety Act of 1999,[1] Congress charged the Commission with ensuring that 911 service is available throughout the country by directing it, among other things, to "designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance." 47 U.S.C. § 251(e)(3).

More recently Congress enacted the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), finding that "enhanced 911 is a high national priority" and that, "for the sake of our Nation's homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation." *Id.* § 102. As relevant here, "enhanced" 911 is designed to provide the caller's location to the 911 call center.

Today it is a relatively simple matter to ensure that a 911 call from a fixed-location wireline telephone number is routed to the nearest 911 call

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[1] Pub. L. No. 106-81, 113 Stat. 1286 (codified in various sections of Title 47 of the U.S. Code).

center (or public safety answering point ("PSAP")) and that the call automatically conveys to the PSAP the location of the caller. The mobile nature of wireless telecommunications, however, has presented technological challenges to the effective operation of a 911 system for wireless carriers. *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245 (¶ 17) (2005), *aff'd, Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006). An effective 911 system for wireless calls must include a real-time capability of determining the mobile caller's location – both in order to route the call to the appropriate PSAP and to provide first responders with accurate information about where they need to go. *Ibid.*

The Commission first adopted 911 rules for the wireless industry in 1996. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676 (¶ 1) (1996). At that time, it was unclear when wireless carriers would acquire the technology necessary to ensure that 911 calls were routed to the appropriate PSAPs and that accurate location coordinates were conveyed with the calls. Thus, in setting implementation deadlines, the Commission made a predictive judgment concerning the pace of technological development while at the same time seeking to accelerate that pace. Specifically, the Commission required wireless carriers to route all 911 calls to the geographically appropriate PSAP by October 1997 (*i.e.*, within one year of the effective date of the rules). *Id.* ¶ 29. The agency also required that, six months thereafter (in April 1998), wireless carriers must relay to the PSAPs

the caller's automatic numbering information (permitting call-backs) and the location of the cell site or base station receiving the 911 call. *Id.* ¶ 63.

As part of the same order, the Commission also established a schedule for implementing more accurate "Phase II" caller location data requirements. The agency provided that by October 2001 wireless carriers "must achieve the capability to identify the latitude and longitude of a mobile unit making a 911 call, within a [specified] radius." *Id.* ¶ 71.

In 1999, the Commission revised its Phase II rules to account for evidence that location accuracy capabilities could be built into wireless handsets themselves (rather than the network), or could take advantage of a "hybrid" combination of handset and network technologies. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 14 FCC Rcd 17388 (¶¶ 6-12) (1999) ("*Third Wireless E911 Order*"). First, in place of the existing unitary standard for all wireless systems, the Commission adopted separate location accuracy standards for network-based and handset-based systems. *Id.* at 17436-37 (quoting 47 C.F.R. § 20.18(h)). These standards remain in effect today.[2] Second, the Commission extended the Phase II implementation deadlines. For carriers

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[2] *See Order* ¶ 4 & n.1, stating that the governing rule requires that wireless carriers "comply with the following standards for Phase II location accuracy and reliability: (1) For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls; (2) For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls; [and] (3) For the remaining 5 percent of calls, location attempts must be made and a location estimate must be provided to the appropriate PSAP."

employing network-based solutions, the revised deadline required compliance with the applicable standard "within 18 months of [a PSAP] request or by October 1, 2002, whichever is later." *Id.* at 17435 (quoting 47 C.F.R. § 20.18(f)). For carriers employing handset-based location technologies, the Commission required compliance with the applicable standard by October 1, 2001, or six months after a PSAP request, whichever is later. *Id.* at 17435-36 (reciting 47 C.F.R. § 20.18(g)).

After implementation of these rules, the Commission received complaints from state and local public safety representatives that wireless carriers were measuring their compliance over unreasonably large geographic areas. For example, the Association of Public-Safety Communications Officials-International, Inc. ("APCO") stated that under some carriers' approach, "a nationwide carrier could use the very high accuracy levels in one portion of the nation to offset extremely low accuracy levels in other substantial areas ... [thereby] leav[ing] significant portions of the country with virtually useless levels of E9-1-1 accuracy." APCO Request for Declaratory Ruling at 4 (October 6, 2004).

In June 2007, the Commission issued a notice of proposed rulemaking in response to these complaints from public safety agencies. *Wireless E911 Location Accuracy Requirements*, Notice of Proposed Rulemaking, 22 FCC Rcd 10609 (¶ 1) (2007) ("*Notice*"). The Commission noted that, although its existing rules had not "expressly" required PSAP-level location accuracy, the agency had "never suggested that it is appropriate to average accuracy

results over an entire state, much less over a multi-state carrier's entire service area." *Id.* ¶ 6. Rather, the Commission stated that its Office of Engineering and Technology, at most, had suggested that averaging accuracy results over a metropolitan area may be appropriate in some cases. *Id* ¶ 6 n.17. The Commission tentatively concluded that the location accuracy standards set out in Rule 20.18(h) should be measured at the geographic level of each PSAP. *Id.* ¶ 1. In this way, carriers could no longer mask substandard compliance in some areas by lumping them in with figures from large geographic areas. *See id.* ¶ 5. The Commission sought comment on that tentative conclusion as well as other issues. *Id.* ¶ 1.

In the *Order* on review, the Commission adopted the proposed PSAP geographic measurement standard, gave carriers five years to come into compliance, and set intermediate one-year and three-year compliance benchmarks – first at the Economic Area ("EA") geographic level, and then, as applicable, at the Metropolitan Statistical Area ("MSA") or Rural Statistical Area ("RSA") levels – "in order to ensure that carriers are making progress toward compliance with Section 20.18(h) at the PSAP level." *Order* ¶¶ 1, 18.[3]

In adopting these requirements, the Commission emphasized the critical public safety need for the automatic transmission of accurate location

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[3] Maps of EAs, MSAs, and RSAs are available at http://wireless.fcc.gov/auctions/data/maps/CMA.pdf; and http://wireless.fcc.gov/auctions/data/maps/ea.pdf.

information at the PSAP level, as evidenced by the "nearly unanimous" support for such a requirement from public safety officials. *Order* ¶¶ 8-11. Wireless 911 callers often do not possess, or are unable to convey, useful information about where they are; and even if circumstances permit callers orally to provide location information to 911 call centers, having to do so may consume precious time in an emergency. *See Order* ¶¶ 9-10 & nn.14-20.[4] In any given case, however, the transmission of automatic location information is useful only if it conveys *accurate* geographic coordinates to the particular PSAP responsible for dispatching first responders. The Commission stressed that, by some estimates, PSAPs in nearly half the country do not receive accurate information (*Order* ¶ 10) – and that such deficiencies have had tragic results. *Id.* ¶ 9 n.14 (crediting report of emergency responders' inability to locate a young girl involved in a Hudson River boating accident, who had called 911 from her cell phone).[5] In sum, the Commission concluded that "the public interest demands that we no longer allow service providers to nullify our longstanding accuracy

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[4] *See also* Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Service* at 15-16 (2002), http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf&id_document=6513296239; *Third Wireless E911 Order*, 14 FCC Rcd 17388 (¶¶ 2-4).

[5] *See also Third Wireless E911 Order*, 14 FCC Rcd 17388 (¶ 4) (noting that "[n]early 70 percent of auto accident fatalities occur within two hours after a crash and, according to a conservative estimate, 1,200 lives are lost each year because of delay in discovering accidents").

requirements by measuring their compliance over unreasonably large geographic areas." *Id.* ¶ 15.

The Commission found that the PSAP-level location accuracy standard it was adopting was "aggressive," but that it already was largely feasible as a technological matter with additional carrier investment. *Order* ¶ 14. Moreover, the FCC concluded, the five-year period it was allowing for carrier compliance should "substantially mitigate[]" lingering feasibility concerns while having a "catalyzing effect on efforts to improve location accuracy measurement." *Ibid.* In this regard, the agency also determined that the intermediate benchmarks it set for implementation after years one and three were warranted in order to ensure that carriers begin to move toward PSAP-level compliance without delay. *Id.* ¶¶ 16, 18. At the same time, the Commission expressed its intent not to "penalize carriers that are making good faith efforts to comply with our location accuracy requirements." *Id.* ¶ 16.

ARGUMENT

Before they can obtain the extraordinary remedy of a stay, petitioners must show that: (1) they will likely prevail on the merits; (2) they will suffer irreparable harm unless a stay is granted; (3) other interested parties will be harmed if a stay is granted; and (4) a stay will serve the public interest. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Petitioners make no such showing here.

I. PETITIONERS ARE NOT LIKELY TO PREVAIL ON THE MERITS

A. Petitioners' APA Notice Arguments Lack Merit.

Petitioners assert that the FCC failed to comply with the APA's notice and comment requirements. Joint Motion 8-11; AT&T Motion 14-16. They contend that although the *Order* purported to address only issues presented in Part A of this bifurcated rulemaking, the Commission – by establishing a timetable for E911 compliance in the *Order* – resolved issues from Part B of the proceeding before the Part B comment cycle was completed.

Contrary to petitioners' contention, the *Order* did not prematurely address any issue raised in Part B. In Part A of the proceeding, the Commission sought comment, *inter alia*, on whether it "should defer enforcement" of any new requirements for implementing Section 20.18(h) "to allow wireless carriers to come into compliance." *Notice* ¶ 1. In Part B, the Commission sought comment on "how long [it] should defer enforcement" if it decided to adopt that approach in Part A. *Ibid.* In the *Order*, the agency decided not to "defer enforcement" of Section 20.18(h), but instead amended the rule to establish specific dates for PSAP-level compliance. As a result of this action, the Part B question of how long enforcement should be deferred became moot.

In any event, even assuming that the Commission did not provide adequate notice or opportunity for comment, petitioners are not entitled to relief unless they can "demonstrate that the agency's violation of the APA's

notice and comment procedures has resulted in 'prejudice.'" *American Coke & Coal Chemicals Institute v. EPA,* 452 F.3d 930, 939 (D.C. Cir. 2006) (citing 5 U.S.C. § 706(2)). No prejudice resulted here. At the time the Commission adopted the *Order*, it had already received the initial comments for Part B of this proceeding. Those comments were consistent with the FCC's conclusion that the *Order*'s compliance deadlines were feasible. Similarly, the Part B reply comments – which were submitted after the *Order* was adopted – provide no substantial basis for questioning the reasonableness of the *Order*'s deadlines. Indeed, the Part B comments confirm what the Commission determined in the *Order*: "improvements in location accuracy are available with existing technology," TruePosition Part B Reply Comments 2, or will soon be possible with technologies that are now being developed.[6] Consequently, any violation of the APA's notice and comment requirements "was at best harmless." *First American Discount Corp. v. CFTC,* 222 F.3d 1008, 1015 (D.C. Cir. 2000).

Petitioners also complain that most parties received no notice of the proposed deadlines before the Sunshine period began. Joint Motion 9-10. The *Notice*, however, clearly indicated that the Commission might decide to

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[6] *See, e.g.,* Motorola Part B Comments 7-12 (describing a variety of location technologies that are under development); Polaris Part B Comments 3-6 (describing Polaris's Wireless Location Signatures technology, which has been deployed by eleven wireless carriers in the United States); Letter from Jon Metzler, Rosum, to FCC Secretary, February 11, 2008, Attachment at 7 (reporting test results showing that Rosum's "TV+GPS" technology complied with FCC location accuracy standards in Nashua, NH, Needham, MA, Santa Clara, CA, Edison, NJ, and Washington, DC).

require PSAP-level compliance *immediately*. The FCC's decision to adopt less stringent deadlines and interim benchmarks was thus a "logical outgrowth" of the *Notice*. *See Covad Communications Co. v. FCC*, 450 F.3d 528, 548-49 (D.C. Cir. 2006).

B. The *Order* Is Neither Arbitrary Nor Capricious.

Petitioners also argue that the *Order*'s requirements do not pass muster under the APA's "arbitrary and capricious" standard. Joint Motion 11-18; AT&T Motion 7-14. These claims lack merit.

The "arbitrary and capricious" standard of review is "highly deferential." *Cellco Partnership v. FCC,* 357 F.3d 88, 93 (D.C. Cir. 2004) (internal quotations omitted). The Court must "presume the validity of the Commission's action," and it may "not intervene unless the Commission failed to consider relevant factors or made a manifest error in judgment." *Consumer Electronics Association v. FCC,* 347 F.3d 291, 300 (D.C. Cir. 2003). The Court is especially deferential to the FCC's "expert policy judgment" regarding "a subject matter [that] is technical, complex, and dynamic." *National Cable & Telecommunications Association v. Brand X Internet Services,* 545 U.S. 967, 1002-03 (2005) (internal quotations omitted). Furthermore, the Court "must respect" the Commission's assessment of how best to fulfill its statutory mandate to ensure "public safety." *Nuvio*, 473 F.3d at 307 (D.C. Cir. 2006); *see also id.* at 312 (Kavanaugh, J., concurring) ("The broad public safety and 911 authority Congress has granted the FCC includes the authority to prevent providers

from selling voice service that lacks adequate 911 capability."). Given the broad deference owed to the Commission's judgments in this area, petitioners have not demonstrated any likelihood of success on the merits of their arbitrary and capricious claim.

Petitioners contend that the record contained insufficient evidence that the deadlines set by the Commission could feasibly be met. Joint Motion 11-16; AT&T Motion 7-13. As an initial matter, this argument rests on a misunderstanding of the applicable legal standard. As this Court has explained, the APA does not obligate the FCC "to describe in detail how every single regulated party will be able to comply with the agency's rules." *See Kennecott Greens Creek Mining Co. v. Mine Safety & Health Administration,* 476 F.3d 946, 958 (D.C. Cir. 2007). To satisfy the APA, the Commission need only determine as a general matter that compliance is feasible with existing technologies or solutions that will soon be developed.

The agency met that standard here. It found that "in many cases, PSAP-level compliance is technologically feasible today and would require only the investment of additional financial resources." *Order* ¶ 14 (citing TruePosition Comments at 2-3). In addition, it found evidence that "location technology providers have developed and are developing technologies that can achieve PSAP-level compliance." *Order* ¶ 16 (citing Polaris Comments 3-8 and TruePosition Comments 2-6). Consistent with this evidence, comments filed in Part B of this proceeding further verify that technologies

with the capability to provide accurate PSAP-level location information already exist or are now being developed. *See* note 6 *supra*.

In making these findings, the FCC necessarily had to make a prediction as to when wireless carriers could feasibly complete implementation of the new E911 requirements: "In such circumstances complete factual support in the record for the Commission's judgment is not possible or required." *Melcher v. FCC,* 134 F.3d 1143, 1151 (D.C. Cir. 1998) (internal quotations omitted). "[A]n agency's predictive judgment regarding a matter within its sphere of expertise is entitled to particularly deferential review." *Fresno Mobile Radio, Inc. v. FCC,* 165 F.3d 965, 971 (D.C. Cir. 1999) (internal quotations omitted). Specifically, in *Nuvio*, the Court held that the FCC acted "well within its authority" when it used "its expertise to make predictive judgments" about how long providers of Voice-over-Internet-Protocol service would need to implement new E911 requirements. *Nuvio*, 473 F.3d at 307.

In fact, this case closely resembles *Nuvio*. There (as here) the Commission decided to impose deadlines for the implementation of new E911 requirements by telephone service providers. In that case (as in this one) the agency found evidence of existing or developing technology that would make implementation feasible. And in both cases, the Commission decided to adopt an "aggressive" timetable for implementation, reasoning that "the cost in human lives" resulting from further delay outweighed the cost of an aggressive compliance deadline. *See Nuvio,* 473 F.3d at 308. As

the Court has found in another context, aggressive deadlines of this sort also serve a "technology-forcing" purpose by helping "to encourage and hasten the development of new technology." *Natural Resources Defense Council v. Thomas,* 805 F.2d 410, 428 n.30 (D.C. Cir. 1986) (internal quotations omitted). The Court upheld the Commission's implementation timetable in *Nuvio*. It should do likewise here.[7]

Petitioners' attacks on the interim compliance benchmarks (Joint Motion 15-16; AT&T Motion 12-13) are just as unlikely to succeed as their challenge to the PSAP-level compliance deadline. Petitioners mistakenly assume that the first interim compliance benchmark moves carriers from nationwide compliance to EA-level compliance. But, as explained earlier, the Commission has "never suggested that it is appropriate to average accuracy results over an entire state, much less over a multi-state carrier's entire service area." *Notice* ¶ 6. Rather, its Office of Engineering and Technology, at most, had suggested that averaging accuracy results over a metropolitan area may be appropriate in some cases. *Id.* ¶ 6 n.17. As a result, the first interim benchmark does not represent nearly as significant a change to the status quo as petitioners claim. Moreover, non-nationwide

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[7] To the extent that this case differs from *Nuvio,* the differences render the petitioners' claims even weaker. This case involves far less demanding deadlines than *Nuvio* did. Whereas the providers in *Nuvio* were required to come into compliance within 120 days, 473 F.3d at 303, petitioners here have five years to comply with the PSAP-level location information requirements. And even the first interim benchmark (concerning EA compliance) will not take effect until one year after the *Order*'s adoption.

carriers with very small coverage footprints are necessarily complying already at an area comparable to, or even smaller than, an EA, even if they average their results on a network-wide basis. It was therefore reasonable for the FCC to expect that carriers could achieve EA-level compliance by September 11, 2008. Finally, given that the Commission found that PSAP-level compliance was "technologically feasible," *Order* ¶ 14; *see also* pages 12-13 *supra*, compliance at the level of an EA – which is larger than a PSAP – is *a fortiori* feasible.

Petitioners contend that the interim benchmarks will force them to "divert significant ... resources into short-term fixes" that will move them no closer to the long-term goal of PSAP-level compliance. Joint Motion at 16. That assertion is baseless. The Commission reasonably anticipated that the solutions used by carriers to comply with the interim benchmarks, such as deploying additional location accuracy equipment, would be equally effective in moving carriers toward the ultimate goal of PSAP-level compliance by September 11, 2012. The agency's predictive judgment in this regard is entitled to substantial deference. *Nuvio,* 473 F.3d at 307.

AT&T asserts that it can do no more to achieve compliance because it has already deployed location technology "on close to 100% of *its* cell sites." Burns/Rinne Decl. ¶ 12 (emphasis added). But it fails to explain why it could not improve its location accuracy by collocating equipment on other carriers' towers or other facilities that it does not own or lease.

AT&T also speculates that the costs of E911 compliance may cause carriers to consider "dropping existing coverage" or "choosing not to extend coverage into new areas." AT&T Motion 14. But neither AT&T nor any other petitioner offers any evidentiary support for this bald assertion. Indeed, petitioners do not even try to explain how compliance would result in service cutbacks, or why seeking waiver relief would not be a feasible alternative. Moreover, as the Commission noted, "it is obviously in carriers' financial interests to argue that any meaningful requirement will not be possible to meet," but they "blur the distinction between that which is infeasible and that which simply requires the expenditure of additional resources." *Order* ¶ 14. It was reasonable for the Commission to expect carriers to devote "additional resources" to a critical public safety priority, and carriers should not be allowed an effective veto over public safety regulation if they simply threaten to drop coverage in response to such regulation.

Finally, AT&T claims that to the extent it has to erect new towers to comply with the interim benchmark, there is insufficient time to do so. AT&T Motion 12. In other contexts, however, the Commission has reasonably required licensees to build out similar facilities within one year.[8] Thus, the initial benchmark in this case is hardly unreasonable. In any

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[8] *See, e.g.*, 47 C.F.R. §§ 90.155, 90.551, 90.631(f) (requiring private land mobile radio licensees to construct and place facilities in operation within 12 months of the date of grant).

event, even if AT&T could not satisfy the benchmark in certain EAs due to factors outside of its control (such as the need to obtain zoning approval), it could always ask the Commission for a waiver.

Essentially, petitioners' complaints about the deadlines the Commission established boil down to a quarrel over administrative line-drawing. This Court has "previously and repeatedly given the Commission wide discretion to determine where to draw administrative lines." *Nuvio,* 473 F.3d at 309 (internal quotations omitted). The Court is "generally unwilling to review line-drawing performed by the Commission unless [petitioners] can demonstrate that lines drawn ... are patently unreasonable, having no relationship to the underlying regulatory problem." *Covad*, 450 F.3d at 541 (internal quotations omitted). Petitioners have given the Court no good reason to disturb the deadlines that the Commission has chosen.

II. PETITIONERS HAVE NOT SHOWN IRREPARABLE HARM

"The basis for injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Wisconsin Gas Co. v. FERC,* 758 F.2d 669, 674 (D.C. Cir. 1985) (internal quotations omitted). To obtain a stay, petitioners must establish that the irreparable injury they would suffer without a stay would be "both certain and great," "actual and not theoretical." *Ibid.* In other words, they must provide "proof indicating that the harm [they allege] *is certain to occur in the near future.*" *Ibid.* (emphasis added). Petitioners have not carried this heavy burden.

Petitioners claim that unless a stay is granted, they will face FCC enforcement action and suffer reputational damage because they will be unable to comply with the initial benchmark established by the *Order*. Joint Motion 18-19; AT&T Motion 17-19. This claim rests on nothing but sheer speculation. Petitioners assume that they will fail to comply with the *Order*'s first compliance deadline six months from now. But the FCC has reasonably predicted that petitioners should be able to meet all of the *Order*'s compliance deadlines. When weighing petitioners' speculation against the Commission's reasoned prediction, the Court must defer to the agency's predictive judgment. *Nuvio,* 473 F.3d at 307.

Petitioners' claim of irreparable harm also ignores the waiver process provided by the FCC's rules. *See* 47 C.F.R. § 1.3. The Commission has frequently granted waivers of wireless E911 compliance deadlines in the past.[9] If petitioners cannot comply with the *Order*'s initial benchmark, despite good faith attempts to do so, due to factors outside their control, they can always apply to the Commission for a waiver to avert the alleged harm.

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[9] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 22 FCC Rcd 1049 (2007) (granting waiver relief to three wireless carriers); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 20 FCC Rcd 7709 (2005) (granting waiver relief to more than 30 wireless carriers). On other occasions, the Commission has denied requests for waiver relief, but declined to pursue enforcement action against carriers. *See, e.g., Request for Waiver of Location-Capable Headset Penetration Deadline by Verizon Wireless*, 22 FCC Rcd 316 (2007).

III. THE EQUITIES WEIGH AGAINST A STAY

Congress has entrusted the FCC with the essential task of "promoting safety of life and property through the use of wire and radio." 47 U.S.C. § 151. The availability of 911 service plays a central role in achieving that paramount objective. Recognizing the vital public interest in reliable 911 service, the Commission in this case adopted rules that are reasonably designed to hasten the development of wireless E911 service that provides more accurate and reliable location information to PSAPs. Such information is critical to ensuring that emergency personnel are promptly dispatched to locations where help is urgently needed. That is why public safety agencies, which are "uniquely qualified to attest to the importance of accurate and reliable location information," were "nearly unanimous in support" of the Commission's rules. *Order* ¶ 10. Prompt implementation of these requirements will serve the compelling governmental interest in promoting public safety.

A stay of the rules would disrupt the critically important process of improving the accuracy and efficiency of wireless E911 service. Any such delay could potentially – and unjustifiably – compromise public safety. Unless the wireless E911 rules are promptly implemented, some PSAPs will continue to receive meaningless location information, no location information, or – even worse – unreliable location information. The failure of wireless carriers to convey accurate location information to 911 call recipients could "result in longer dispatch times, and perhaps even no

response by public safety officials who lack sufficient information to locate the caller." *Order* ¶ 9. This is an unacceptable situation, and the Commission acted expeditiously to address it. A stay would delay the implementation of E911 requirements that are needed to avert future tragedies. In the meantime, lives could needlessly be lost.

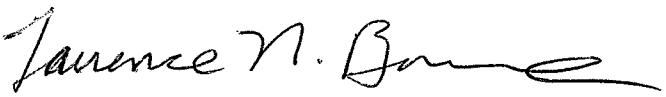
Petitioners argue that the public will not be harmed by a stay because the *Order*'s compliance deadlines are impossible to meet. Joint Motion 20; AT&T Motion 19-20. That is incorrect. As we explained in Part I.B above, the Commission reasonably found that its compliance deadlines could feasibly be met. Therefore, a stay of the rules would delay the development of more efficient and reliable wireless E911 service, thereby placing the public's safety at risk.

This Court has observed that "delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake." *Telecommunications Research & Action Center v. FCC,* 750 F.2d 70, 80 (D.C. Cir. 1984). Applying that principle to this case, the Court should deny petitioners' stay request. Petitioners bear an especially heavy burden in seeking to delay the implementation of regulations that are designed to promote public safety. They have given the Court no good reason to stay FCC rules that have the potential to save lives.

CONCLUSION

For the foregoing reasons, the Court should deny the motions for stay.

Respectfully submitted,



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v.

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents.

Certificate Of Service

I, Shirley E. Farmer, hereby certify that the foregoing "Opposition of Federal Communications Commission to Emergency Motions for Stay Pending Judicial Review" was served this 10th day of March, 2008, by hand-delivery where indicated by an asterisk and otherwise by mail, postage prepaid, to the following parties at the addresses listed below:

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